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MASTER OF MILITARY STUDIES

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**TITLE:**  
**Rules of Engagement: Three Perspectives of Violations in Iraq**

SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF MILITARY STUDIES

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## Executive Summary

**Title:** Rules of Engagement: Three Perspectives of Violations in Iraq

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**Thesis:** Considering how Rules of Engagement violations in Iraq were perceived by the insurgency, counterinsurgency, and US media will help commanders mitigate damaging impacts and prepare for future military operations.

**Discussion:** From March 2003 to December 2011 The United States was engaged in combat operations in Iraq. Initially, military action was used to topple the regime of Saddam Hussein but quickly evolved into nation building and fighting an unanticipated insurgency. Military service members were given Rules of Engagement (ROE) to guide interaction with the people of Iraq, both combatant and non-combatant. Despite updating, training, and implementation of ROE, multiple violations occurred having negative and lasting impacts on counterinsurgency operations. This study will examine three ROE violations in Iraq from the perspective of the insurgent, counter-insurgent, and US media. By viewing an ROE violation from these points of view, the commander will have a better assessment of the battlefield and formulate an improved response to ROE violations. The study will forecast how these violations may shape US policy in future military operations.

**Conclusion:** Combat operations will inevitably result in the loss of innocent life. When these events happen as a result of ROE violations, the commander must understand how the major participants will view the event in order to succeed in counterinsurgency operations.

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## Preface

During four tours of duty to Iraq and one in Afghanistan, I witnessed multiple variations of Rules of Engagement (ROE). Despite commanders' best efforts, there have been, perceived or actual, violations of ROE that significantly impacted the United States' ability to influence the area of operation. Commanders often overlook how the insurgency will exploit a ROE violation and potential negative reporting by the US media that may lead to extended negative effects which could be mitigated.

Leaders at all levels of command should consider the importance of the insurgent, counterinsurgent, and media perspectives when responding to an ROE violation. To emphasize this importance, I highlight where commanders made mistakes and how future leaders can prepare for counterinsurgency operations through the case studies of the Fallujah Mosque shooting in 2004, Lt Ilario Pantano's engagement of detainees in 2004, and the Haditha Shooting in 2005.

I would like to thank Dr. Paulette Otis for her patience and direction as she took my very broad topic and narrowed it down to a relevant and digestible body of work. Also, Lieutenant Colonel Michael Lewis, United States Army, whose understanding encouraged me to remember the human factors on both sides of the counterinsurgency fight. Lieutenant Colonel Eric Dent, United States Marine Corps Public Affairs Office, Tom Bowman from National Public Radio, and Stephen Pietropaoli, Rear Admiral United States Navy (Ret), Senior Director of the Center of Naval Analysis CAPSTONE program were all instrumental in providing perspective and guiding the analysis portion of the paper.

## Introduction

Considering how Rules of Engagement (ROE) violations in Iraq were perceived by the insurgency, counterinsurgency, and US media will help commanders mitigate damaging impacts and prepare for future military operations. Counterinsurgency operations in Iraq ended in December 2011 providing observers the benefit of perspective. Notable among lessons learned in Iraq was the potential for violations of ROE during a protracted counterinsurgency campaign.

When ROE violations occur, commanders are required to respond with inquiry and explanation. This paper will present the argument that a Commander cannot view a violation of ROE through a myopic lens of the counterinsurgent during the reactionary phase. A commander can benefit if the insurgent and US media are considered when formulating a response to ROE violations.

The definition and implementation of ROE has evolved over time. The US and the international community derive ROE from the theory *Jus In Bello*, the morally proper conduct of war,<sup>1</sup> which provides guidance on how combatants will engage the enemy and non-combatants in hostile situations. The Law of Armed Conflict provides the international legal authority for which ROE is developed and has become essential to the conduct of war<sup>2</sup>. Examining previous applications of ROE, how ROE is tied to the Law of Armed Conflict, and aspects of modern ROE will provide the foundation to examine ROE violation response.

Three ROE violations are examined: the Fallujah Mosque shooting in 2004, the Lt Ilario Pantano shooting of detainees in 2004, and the Haditha incident in 2005. The insurgent, counterinsurgent, and US media reactions are observed to extrapolate how

each participant viewed the event, actions taken after the ROE violation, and if the counterinsurgent successfully formulated a response. The importance of integrating the points of view of the insurgent and US media following an ROE violation are highlighted, and the impact of ROE violations in Iraq on future counterinsurgency operations are considered.

### **How ROE Has Been Defined Over Time:**

Joint Publication 1-04, Legal Support to Military Operations, defines ROE as “directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered.”<sup>3</sup> This is a modern definition that has taken many years, multiple engagements, and public consensus to develop. Service members are instructed on the intent of ROE, who can issue ROE, and when ROE is to be given instead of mere instructions on what to do when faced with an adversary.

Commanders routinely give subordinates instructions on how and what to accomplish during times of battle and occupation. Historical military leaders such as Alexander the Great<sup>4</sup> and Napoleon Bonaparte<sup>5</sup> took interest in how soldiers treated adversaries and to what extent combat actions impacted non-combatants in disputed territories. There were understandings, or unwritten codes, that military organizations and societies agreed on derived from cultural norms and traditions regarding civilians and prisoners of war.<sup>6</sup>

The American Civil War was a watermark time for ROE development in the United States. Abraham Lincoln understood that the new, aggressive, and modern warfare that was being waged could easily slide into total destruction of the Southern

States. Limits were required to ensure that Union troops used proportionality when engaging military targets. Lincoln understood that after major combat operations were over, the Union would need to be rebuilt. This reunification would require the participation of the Southern people. If the Union Army did not use proportionality, the South would lack infrastructure needed for economic growth and the emotional scars would prevent cooperation.<sup>7</sup>

Lincoln's ROE were reduced into a code<sup>8</sup> for wide distribution to soldiers of the Union Army as General Order Number 100.<sup>9</sup> The basis of the modern ROE card, carried by US service members, began with this document which provided 157 articles and instruction on torture, destruction of property, revenge prohibition, handling of prisoners, and distinction between soldiers and non-combatants<sup>10</sup>. Commonly known as the Lieber Code, for its author Francis Lieber, it provided guidelines but did not prevent commanders from taking essential action to win the war.<sup>11</sup>

Once this code was circulated in the North, it inevitably reached the South but received sharp criticism for endorsing harsh treatment toward Southern civilians, Southern property, and slaves by Union forces. After revision and further distribution, it eventually was translated and broadcast to an international audience. Later the Union ROE code influenced similar codes issued in the United Kingdom, France, Prussia, Spain, Russia, Serbia, Argentina, and the Netherlands.<sup>12</sup>

### **How ROE is Tied to Law of Armed Conflict:**

Following the American Civil War the world continued to apply rules of engagement in World War I and II with different levels of appreciation and adherence. Some nations went to great lengths to avoid civilian casualties and the suffering of the

innocent while others operated without restraint. Following World War II, international laws that regulated the conduct of armed hostilities were adopted and solidified under the International Law of Armed Conflict (LOAC). The United States further codified the LOAC in 1949, which provides the international legal bases for current ROE.<sup>13</sup>

LOAC's primary objective is not to prevent war but provide guidelines that restrict means and methods of warfare. This is intended to protect non-combatants and minimize unnecessary suffering by soldiers. Ideally, LOAC governs the conduct of war with four fundamental principles: distinction, proportionality, military necessity, and humanity<sup>14</sup>. This requires a commander to know the target, use minimal force needed, ensure the target is a military requirement, and to show basic humanity during times of conflict.<sup>15</sup>

### **How ROE is Currently Defined:**

It is critical to make a distinction between ROE and LOAC. LOAC provides the legal framework governing the conduct of hostilities in the international community. ROE further restricts these boundaries depending on circumstances and mission requirements. The US Joint Chief of Staff further comments, “ROE provide parameters within which the commander must operate in order to accomplish his or her assigned mission.”<sup>16</sup> The US Department of Defense ROE are the principal mechanism to ensure that US military forces are at all times in full compliance with obligations under domestic and international law. In keeping with the US Joint Chief of Staff’s definition, it provides the circumstances and limitations under which US forces will initiate and/or continue combat engagement.

The three components of ROE are law, strategy, and policy. Critical to the formation of ROE, both international and US law must be considered when creating the specific guidelines for military members. As Lincoln realized during the Civil War, unchecked destruction of the South would have severely retarded the North's efforts to unite the states and prosper as a nation. Policy at the diplomatic level must be considered when setting the conditions for action. Military commanders and civilian authority must confer to ensure that the actions taken by service members do not impede international relationships critical to long-term success.<sup>17</sup>

In addition to the three components, ROE attempts to adhere to national policy, operational requirements, and laws that narrow the scope of the ROE. The operational level of war is considered as the commander begins to place strategic objectives into actual movement of forces into locations. Furthermore, specific laws are cited to ensure that the service member has authority to act. These laws are derived from national, international, and the foreign country in which operations take place.<sup>18</sup>

Subsequently, the commander develops standing and mission specific ROE. Standing ROE provides the overarching guidelines for an entire theater campaign. Reduction of the standing ROE is not permitted; only additional restrictions can be added when missions require stricter ROE. This leads to mission specific ROE used when certain operations are identified to require tighter control due to an increase in civilian populations or mission requirements.<sup>19</sup>

## **Insurgent**

Joint Publication 1-02, The Department of Defense Dictionary of Military Terms, defines an insurgency as, “an organized movement aimed at the overthrow of a

constituted government through the use of subversion and armed conflict.”<sup>20</sup> Marine Corps Warfighting Publication 3-33.5, Counterinsurgency, continues this definition of an insurgent as, “individuals organized in a protracted politico-military struggle designed to weaken the control and legitimacy of an established government, occupying power, or other political authority while increasing insurgent control.”<sup>21</sup> Combined, these definitions provide the framework regarding insurgency in this study.

The opposition in Iraq began as a conventional force that was quickly defeated by US and Coalition Forces. By June of 2003,<sup>22</sup> former Iraqi regime loyalist and anti-coalition actors within Iraq began to create the foundation for the insurgency. With financial support provided by Al Qaeda in late 2003, combined with criminal entrepreneurs and religious extremists, a segment of society formed to resist the new and fragile Iraqi government and US presence.<sup>23</sup> These different groups mutated over eight years and provided continuous resistance to stability and reconstruction in Iraq.

### **Counterinsurgent:**

Joint Publication 1-02 defines a Counterinsurgency as “military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat insurgency.”<sup>24</sup> After the dismantling of the Saddam Hussein regime, Iraq began to reform under new leadership. The US, in conjunction with multiple allied nations, supported these efforts through security and stability operations and will serve as the counterinsurgent in this study.

Although initial engagements and governance were predominately conducted by US and Coalition forces, by 2004 an emerging Iraqi Police and Army mobilized while officials were elected to office. Responsibility continued to shift to the Iraqi Government

which culminated in the withdrawal of US forces in December of 2011. Throughout this tumultuous period in Iraq history, the US and allied nations continued to fund, train, and advise all levels of the Iraqi government and military while conducting combat operations in an attempt to defeat the ever growing and ideologically shifting, insurgency.

**US Media:**

The US media is a subset of the larger international media that combines to continuously cover events around the world. In this paper, US media is defined as print, television, and internet entities that cater to a US audience. Although some US media organizations mentioned have the potential of international influence, viewers in the US comprise the core followership. Most notable of these are the Wall Street Journal, Washington Post, New York Times, ABC, NBC, CBS, FOX News, blogs, and internet news sources.

The media took on a new primacy in the US during the mid to late 20<sup>th</sup> century. The power to influence the American population came to a newfound crescendo during the Vietnam War with the availability of broadcast media. A similar eruption occurred again in the 1980s when cable networks began dedicating mass resources to perpetuating a 24-hour news cycle<sup>25</sup>. Unfiltered information made easily available via the internet has continued to open more US homes to different opinions and options. Combined, the US media's access to viewers has provided additional advertising revenue to major media organizations making journalism extremely economically profitable. Historically, the US has enjoyed access to information due to the constitutional freedom of speech and advances in technologies which offer citizens data to form opinions that eventually filter to the election ballot and shape US policy.<sup>26</sup>

## **1<sup>st</sup> ROE Violation (Fallujah Mosque Shooting, 2004)**

The subsequent sections will examine three case studies that provide valuable insight into responses to ROE violation. The initial facts regarding the event will be presented followed by the reaction of the insurgent, counterinsurgent, and US media. The case studies will highlight areas where commanders neglected the insurgent and US media's point of view and forecast a response in future counterinsurgent operations.

In November 2004, after 20 months of combat operations in Iraq, US Forces lead a counterinsurgency fight against insurgents in the city of Fallujah. This marked a return to conventional style operations of systematically clearing a city, causing some of the deadliest fighting of the Iraq War. Insurgents, counterinsurgents, and civilians were injured and killed during this bloody event despite a considerable effort to mitigate loss of life.<sup>27</sup>

During the initial days of the operation embedded journalist Kevin Sites videotaped a Marine shooting an unarmed Iraqi combatant inside a Mosque in Fallujah.<sup>28</sup> Although the journalist felt some trepidation about releasing the video, his obligation to his profession prevailed. The footage quickly emerged in the US media promoting calls for action by the US public. The United States Marine Corps hastily issued a press release stating that the matter was under investigation and launched a preliminary inquiry into the matter.<sup>29</sup>

The insurgency, although preoccupied in fierce action against the counterinsurgency in Fallujah, used the footage to rally support among the Sunni population in the area. In an attempt to further discredit the newly elected Iraqi Prime Minister, who was Shiite, the insurgency relayed a message of a Shia lead government,

backed by infidel invaders, attacking unarmed men in a mosque.<sup>30</sup> This message rallied support for the insurgency and additional fighters migrated to Fallujah. Additionally, the insurgent's exploitation of the Mosque shooting contributed to a successful and extensive insurgent recruiting campaign throughout Iraq.<sup>31</sup>

The initial report faded from the front page in the US Media after several weeks as events, such as the prisoner abuse at Abu Ghraib detention facility and continued fighting in Fallujah took its place. The US Marine Corps conducted an extensive investigation and found that the Marines' actions in the shooting were "consistent with the established rules of engagement and the law of armed conflict."<sup>32</sup> The insurgency continued to use this perceived affront toward a religious symbol and brutality against the unarmed combatant as another example of the counterinsurgency's brutality and the inability of the Shiite majority Iraqi government to provide a stable and secure nation to which Sunnis could belong.<sup>33</sup>

The counterinsurgency did not provide a clear explanation of the event to the Iraqi citizens. The Iraqi people turned to traditional sources of information within their culture to glean understanding and rationalization regarding the Mosque shooting and how the US Marines were being held accountable. The insurgency exploited the information gap and provided traditional sources of authority, such as clerics and community leaders, with a pro-insurgency narrative<sup>34</sup>. Casting the Iraqi government as ineffective leaders and unable to control the US military, the insurgency used the event as a successful recruiting tool. The insurgency's ability to frame the event, without a counter-narrative provided by the counterinsurgent, also garnered sympathy from potential counterinsurgency supporters and bolstered the insurgency support among the Iraqi populace.

## **2<sup>nd</sup> ROE Violation (Lt Ilario Pantano Shooting Detainees, 2004)**

Preceding the major combat offensive in Fallujah, Iraq in November 2004, US Marines assumed responsibility for western Iraq. This area included the Sunni Triangle, given its name for a predominantly Sunni Islam population, which encompassed the town of Mahmudiyah on the outskirts of Fallujah. The US military was transitioning from conventional operations to stability and counterinsurgency operations with the local Iraqi authorities.

In April of 2004 while responding to an ambush of an Army convoy, Lt Ilario Pantano shot two Iraqi detainees who showed signs of hostility. Approximately one month later, Sgt. Daniel Coburn reported the event as a potential violation of ROE.<sup>35</sup> Sgt. Coburn informed the Command that the Iraqi detainees were not armed and did not pose a threat. Lt Ilario Pantano was quickly moved to a position in the operations center and away from combat operations. An investigation was launched into the matter and official press release was delivered, via the Public Affairs Officer (PAO)<sup>36</sup>, to the media. All parties were interviewed and the Naval Criminal Investigation Service (NCIS) was given the task of leading the investigation. Violence in the area, and local sentiment toward Coalition Forces, prevented the bodies from being exhumed and little information was passed to the local population about the investigation.<sup>37</sup>

The event was reported in US media but received a very different response from the American people. Many felt that Lt Ilario Pantano was unjustly charged with murder and that the US military was not doing enough to protect its service members. There were calls from the US Congress to ensure that current ROE protected US service members by allowing self-defense during combat operations.<sup>38</sup>

Lt Ilario Pantano was eventually cleared of the charges after a yearlong investigation but still suffered from the career-ending event. Lt Ilario Pantano and his family received death threats ultimately resulting in his resignation from the United States Marine Corps. This incident also marked a turning point in the ROE debate regarding the level of restriction and how the US military second-guessed those it charged with conducting combat operations.<sup>39</sup>

### **3<sup>rd</sup> ROE Violation (Haditha, 2005)**

One year after the Fallujah Mosque shooting, Marines operating in Haditha, Iraq opened fire on a car and cleared two homes resulting in the death of 15 Iraqis, including four women and six children on November 19<sup>th</sup>, 2005.<sup>40</sup> This followed an IED strike earlier the same day that resulted in the death of one US Marine and injury of two others. The actions in Haditha were reported up the chain of command to the Battalion Commander but did not lead to an immediate investigation. The military PAO released a statement that 15 insurgents and civilians were killed in a roadside bomb without further amplification or explanation to the US press or citizens of Haditha.<sup>41</sup>

An Iraqi human rights group, Hammurabi Human Rights Group, operating in Western Iraq, took video footage of the area and dead Iraqis in an attempt to record the suspected crime scene and bring attention to the event. Haditha residents were outraged and felt that the men, women, and children in the car and homes were murdered and demanded justice. This was elevated by the insurgency operating in the area, and relations between the civil authorities, citizens, and Marine units significantly decreased.<sup>42</sup>

Tim McGirk, of *TIME* magazine, was given a copy of the video taken by the Hammurabi Human Rights Group and quickly realized that it did not match the accompanying press release. After contacting the PAO associated with the unit, McGirk was informed that the military viewed the footage as propaganda generated by the insurgency in an attempt to smear the counterinsurgency effort and negatively influence Iraqi citizens. McGirk's persistent questioning, calls from Hammurabi Human Rights Group, and outcry from Haditha citizens finally gave way to an NCIS investigation.<sup>43</sup>

Six months after the event, the US media began to give broadcast time to the Haditha killings.<sup>44</sup> Sparked by US Congressman John Murtha's claims that the Marines overreacted due to combat stress, the full attention of the US press was given to the event and finally the investigation gained national attention. This culminated in June of 2006 when *Time* magazine ran a cover story reporting the events and portraying the Marines as violating ROE and accused senior military officers of withholding information<sup>45</sup>.

Two years following the initial engagement in Haditha, the squad leader, Staff Sergeant Frank Wuterich, plead guilty to negligent dereliction of duty as part of a deal with military prosecutors.<sup>46</sup> The Battalion Commander was reprimanded for not reporting the event and conducting a timely preliminary internal investigation<sup>47</sup>. Requirements for additional ROE training were mandated and future loss of civilian life would automatically require a preliminary investigation to be conducted by Marine units.<sup>48</sup>

The insurgency and the Hammurabi Human Rights Group used witness accounts from children, most notably the "Haditha Girl" Iman Waleed,<sup>49</sup> to stir Iraqi discontent. No murder charges were levied against the US Marines involved which lead many Iraqis to believe that the US considered the lives of Iraqi men, women, and children were of less

value than a US life. Additionally, the length of time required to conduct the investigation was incomprehensible to most Iraqis who were accustomed to swift retribution.<sup>50</sup> The convoluted and prolonged military legal system, combined with the appearance of a conspiracy to conceal information, led to further resentment and delegitimizing of the Iraqi Government, Coalition Forces, and the counterinsurgency.<sup>51</sup>

### **How Considering Different Points of View Will Help Commanders.**

Combat is often viewed as gaining or losing ground on a battlefield. In a counterinsurgency fight, the space disputed is the human terrain. General David Petraeus identified “trust” as the key component to winning the human terrain.<sup>52</sup> When an ROE violation occurs, there is a fleeting moment where, despite the actions, trust between the civilian population can be maintained.<sup>53</sup> Commanders may be able to better prepare a correct and timely response by anticipating how the insurgency and US media may use a ROE violation.<sup>54</sup>

Timing is the deciding factor that determines success or failure following an ROE violation. The commander must attempt to frame the issue by pushing his response ahead of the insurgency and US media. The first impression of an event is critical and very hard to overcome regardless of information that is presented following an investigation. Emotions are often persuaded by images and inaccurate information that sensationalizes an event.<sup>55</sup>

The military commander is already on the “back foot” following an ROE violation. This unfavorable position is created by requirement to gather facts and conduct a formal investigation. Many times initial reports are inaccurate, requiring multiple

accounts of the same event and site surveys to be conducted to create an accurate account of the event.<sup>56</sup>

To mitigate this effect, commanders must arm front line media personnel with the context of what is expected to happen prior to the operation. The basic answer to a reporter of, “we are investigating, more to follow” is not sufficient<sup>57</sup>. The PAO must give a back-story to the event. Simple information such as what the unit was doing in the area and if contact with the insurgency was made is easily obtained and should be given. By preparing and providing boilerplate information for why operations were being conducted in the area, the commander can begin to frame the event. The US media will report something on the ROE violations providing the commander a fleeting chance to give factual information without compromising the following investigation. This will establish trust and communication with the media needed to report additional information as it becomes available.<sup>58</sup>

To deny the insurgent’s ability to frame the ROE violation to benefit the insurgency, commanders must engage with the local civilian leadership as soon as the security situation allows.<sup>59</sup> The commander’s presence, followed by factual statements and a sincere concern for the lives lost, will provide witness to the security and stability operations in the area. Paramount to building trust among the local population is creating transparency and showing acceptance of responsibility<sup>60</sup>. Postponing contact with local leadership until the entire story is developed provides a window for the insurgency to engage with local leaders, give inaccurate information, and paint the counterinsurgency as dishonest. The insurgent’s efforts will continue to degrade the trust required to win in a counterinsurgency.<sup>61</sup>

The Haditha shooting in 2005 represents an example of where the counterinsurgency was slow to provide information and lost the initiative to the insurgency and US media.<sup>62</sup> The event was not initially reported as an ROE violation but as an IED that killed insurgents and civilians. It took the persistence of a reporter, coupled with a video of the bodies made by Hammurabi Human Rights Group, to spark an investigation. One month was sufficient time for the insurgency to meet with the local population, shape the creation of the video, and delegitimize the counterinsurgency's efforts in Haditha. The US media had justifiable suspicion of information being withheld by the US military and shaped the coverage accordingly. The counterinsurgency never recovered from these initial mistakes and the Haditha shooting proved detrimental to operations in the area for a significant amount of time following the initial event.<sup>63</sup>

The Fallujah Mosque shooting provides an example of where the counterinsurgency moved quickly and despite a horrific event captured on video, was able to shape the perspectives of the Iraqi and US public.<sup>64</sup> The reporter that captured the video made the commander aware of it and notified him that it would be released.<sup>65</sup> The commander immediately began to engage the media on the ROE, how the investigation would be handled, and more importantly what the Marines were doing in the area. Although major combat operations in the area prevented engagement with the local population in Fallujah, the counterinsurgency was able to engage with the government and people at the national level in a timely manner.

In addition to timing, the commander must look at the event and anticipate what aspect of it the insurgency and US media will emphasize. Cultural aspects in a country and similar news events at the time of the event will determine which threads are

highlighted and hold significant importance to different groups.<sup>66</sup> Framing of the ROE violation becomes the central issue as both perspectives provide a narrative that will serve their interest. The insurgency in Haditha emphasized the killing of the four unarmed men in a car as an example of the counterinsurgency not using discretion when engaging potentially hostile forces. Additionally, the insurgency painted the counterinsurgency as freely killing those involved and clearing potential hostile sites without concern for those inside. The US media was more fixated on the potential cover up of facts by the US military in an attempt to hide perceived wrong doings by its members. Trust between the US military and public was in question, and eventually became the overarching story line in the US.<sup>67</sup>

In the Fallujah Mosque shooting, the insurgency stressed the inexcusable presence of non-Muslims in a Mosque as a sign of disrespect to the Islamic faith. This tied into the narrative of counterinsurgents initially invading Iraq as crusaders bent on a religious war, not as liberators of a tyrannical regime.<sup>68</sup> The overarching point delivered by the US media was the killing of an unarmed prisoner of war. This resonated with the US public's demands that the US military treat detainees with compassion and that US service members are above killing those that surrender.

A portion of the US public viewed the treatment Lt Ilario Pantano received from his command as the significant issue and used it as motivation for action. US citizens supporting Lt Ilario Pantano petitioned the US Congress which led to US House Resolution 167 introduced in 2005 by Representative Walter B. Jones that expressed Congressional support for Lt Pantano.<sup>69</sup> The insurgency, as in the Haditha event, capitalized on the loss of innocent lives. Additionally, the story was combined with the

events at the US controlled Abu Grab prison to investigate how the US military handled detainees.<sup>70</sup>

A quick, accurate, and culturally sensitive response may not be enough to mitigate an ROE violation if it is not comprehensible by the civilians in the area and the US media. In Iraq, the legal system is very different from the western model commanders are accustomed to operating in. Commanders should attempt to provide a link between the western and indigenous legal systems.<sup>71</sup> If not, the insurgency will point to the perceived slowness of the investigation and litigation process as the counterinsurgency's way of not taking appropriate action.

Proportionality of punishment and crime often times presents a hurdle for the indigenous populations. Commanders should attempt to explain the difference levels of punishments and due process. Unfortunately, the insurgency may exploit the lesser conviction as evidence that the counterinsurgency puts less value on Iraqi lives.<sup>72</sup> The American public may potentially not understand the dismissal of charges based on lack of evidence when visual evidence exist showing the service member engaging in the act. Although the most challenging of the three, linking the punishment to the crime is crucial in denying the insurgency ability to use the event and enable the US media an opportunity to show that the service member was held to the high standard expected by the people of the US.

## **What Impact Will ROE Violations Have On Future Counterinsurgency**

### **Operations?**

Greater clarity of ROE violations in Iraq allows understanding of how and why violations happen and what commanders can do to mitigate the effects. More

importantly, military members who face similar situations can learn and not replicate the same errors. Although no two situations will be an exact copy, enduring lessons can be applied to the next counterinsurgency faced by the US military.

Training is the base line and logical starting point for any ROE.<sup>73</sup> Proper training will reduce the requirement for a post ROE violation response. ROE training increased during the war in Iraq but continued emphasis must be added on the importance of understanding how ROE plays into combat operations. Tradition will enable a migration toward conventional methods of training where stationary targets are confirmed and engaged. Military training centers in the US are designed to facilitate large unit movements against like forces where ROE is not a major consideration. As the military shifts the focus of training back to conventional methods, it must retain ROE as a baseline for target acquisition and engagement regardless of the type of target.

This starts by ensuring the link is made between what the ROE says and what is intended, throughout the chain of command.<sup>74</sup> Many times service members are given the guidelines for when to shoot and when to limit fires. Although guidelines are important, the executor of the fires must understand the overall implications of each round fired and measure that against the mission assigned. Conceptually, the counterinsurgent must embrace the ROE and why it has been implemented. The misconception that junior enlisted and officers cannot process the *why* but should only be given the *how* negates the intelligence of the modern solider. Training service members to not view ROE as limitations but as intent is the first step in helping them to understand and properly implement ROE in a counterinsurgency.<sup>75</sup>

The ROE violations in Iraq have solidified the importance of ROE consideration in a commander's decision making process. After the question of threat to force and unit capability are considered, the discussion must be had to determine if the planned response is proportional and necessary. General David Petraeus stated, while in command of counterinsurgency forces in Iraq, "Commanders must be willing to lose the tactical fire fight in order to win the strategic battle."<sup>76</sup> Put another way, every round fired in a counterinsurgency fight sets the counterinsurgent back in regards to a positive relationship with the local population.<sup>77</sup> This is not meant to limit the ability of the counterinsurgent to defend person, property, or the population but to remind US service members that there are ramifications for engaging any target on the battlefield. Combining the ROE criteria within escalation of force and combat operations center battle drills will decrease the number of ROE violations and provide the commander, and junior service members, the ability to gain and maintain the human terrain.<sup>78</sup>

## **Conclusion**

The US public places a high expectation on US service members. Grounded in the theory of *Just War* and the International Law of Armed Conflict, US service members are provided ROE to guide them during combat.<sup>79</sup> Implementing ROE, and then responding to the inevitable violation of them, was highlighted during the eight years of war in Iraq as one of the most critical.

The events in Fallujah, Mahmudiyah, and Haditha provide stark examples of where counterinsurgent forces were faced with decisions following ROE violations. Failing to provide a comprehensible response in a timely manner prevented the counterinsurgent forces from minimizing the insurgent's ability to exploit the event.

Additionally, the counterinsurgent response failed to account for how the US media would portray the events causing friction between the US public and military.

A commander, when faced with this emotionally charged situation, is well served by considering how the insurgent and US media will perceive the ROE violation. Adding these two perspectives to his own point of view will enable him to lessen the impact of the perceived violation and may provide an opportunity to gain trust with the local populace and US citizen.

Although this paper primarily focuses on the mistakes made by the counterinsurgent there are some examples of success. Commanders who served in Iraq brought lessons regarding responses to ROE violations to Afghanistan and made timely, cultural aware, and digestible responses. A continued emphasis placed on conceptual ROE training at the lowest level, ensuring that ROE remains a key decision point during counterinsurgency combat operations, and fostering a working relationship with the US media will aid in future counterinsurgency operations.

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<sup>1</sup> Jus In Bello, Encyclopedia Britannica.

<sup>2</sup> Carroll Connelley and Paolo Tripodi, eds. *Aspects of Leadership: Ethics, Law, and Spirituality* (Quantico, Va, Marine Corps University Press, 2012), 226.

<sup>3</sup> Joint Chiefs of Staff, *Legal Support to Military Operations*, no 1-04, 2007.

<sup>4</sup> Ruth Sheppard, *Alexander the Great At War* (Oxford, United Kingdom, 2011), 26.

<sup>5</sup> Michael Hughes, *Forging Napoleon's Grande Armee* (New York, NY, 2012), 197-198.

<sup>6</sup> David Greenberg, "Fighting Fair: The Laws of War and How They Grew." *Slate*, January 2002, [http://www.slate.com/articles/news\\_and\\_politics/history\\_lessons/2002/01/fighting\\_fair.html](http://www.slate.com/articles/news_and_politics/history_lessons/2002/01/fighting_fair.html), (accessed January 20, 2013).

<sup>7</sup> John Fabian Witt, "Lincoln's Laws of War." *Slate*, February 2009, [http://www.slate.com/articles/news\\_and\\_politics/history\\_lesson/2009/02/lincolns\\_laws\\_of\\_war.html](http://www.slate.com/articles/news_and_politics/history_lesson/2009/02/lincolns_laws_of_war.html) (accessed November 2012)

<sup>8</sup> Yale Law School, Lillian Goldman Law Library, The Avalon Project. *General Orders No. 100: The Lieber Code, Instructions for the government of armies of the United States in the Field.* [http://avalon.law.yale.edu/19th\\_century/liber.asp](http://avalon.law.yale.edu/19th_century/liber.asp)

<sup>9</sup> Witt, 1.

<sup>10</sup> Yale Law School, The Lieber Code.

<sup>11</sup> Witt,2.

<sup>12</sup> The Red Cross, The Lieber Code: Limiting the Devastation of War.

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<sup>13</sup> Connelley, Tripodi, 226.

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<sup>14</sup> Connelley, Tripodi, 227.

<sup>15</sup> Connelley, Tripodi, 227.

<sup>16</sup> Chairman of the US Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, *Standing Rules of Engagement/ Standing Rules for the Use of Force for U.S. Forces*, 2005, 85.

<sup>17</sup> Connelley, Tripodi, 224.

<sup>18</sup> Connelley, Tripodi, 225.

<sup>19</sup> Connelley, Tripodi, 227.

<sup>20</sup> U.S. Department of Defense, Dictionary of Military and Associated Terms, JP 1-02 (Washington, DC, November 2012) 150.

<sup>21</sup> U.S. Department of the Army and Headquarters U.S. Marine Corps, *Counterinsurgency*, FM3-24 or MCWP 3-33.5 (Washington, DC: U.S. Department of the Army, December 2006).

<sup>22</sup> Thomas R. Mockaitis. *The Iraq War: A Documentary and Reference Guide*. (Santa Barbara, CA, Greenwood, 2012) 204.

<sup>23</sup> Mockaitis, 202.

<sup>24</sup> JP 1-02, 71.

<sup>25</sup> Deborah L. Jaramillo, *Ugly War, Pretty Package: How CNN and FOX News Made the Invasion of Iraq High Concept* (Bloomington, IN, Indiana University Press, 2009), 26.

<sup>26</sup> *Rethink Afghanistan*, DVD. Directed by Robert Greenwald. (2009; New York, NY, Disinformation Company, 2009).

<sup>27</sup> Kevin Sites, *In the Hot Zone, One Man, One Year, Twenty Wars* (New York, Harper Perennial, 2007).

<sup>28</sup> Sites, 13.

<sup>29</sup> Sites, 310

<sup>30</sup> Owen West and Phillip Carter, “What the Marine Did: The Shooting of an Unarmed Iraqi was a Tragedy But Was it a War Crime?” *Slate*, November 2004.  
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<sup>31</sup> Sites, 16.

<sup>32</sup> David Hancock, No Charges in Fallujah Shooting. CBSNews.com, February 11, 2009.  
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<sup>33</sup> CBS Interactive Inc, “More Fallout From Mosque Shooting” CBSNews.com, February 2009.  
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<sup>34</sup> Sites, 21.

<sup>35</sup> Paul Judge-Quinn, “Did He Go Too Far?” *Time*, February 2005,  
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<sup>36</sup> Quinn.

<sup>37</sup> Quinn.

<sup>38</sup> Logan Bunting, “Marines Drop Charges of Iraq Murders Against Lieutenant” *USA Today*, May 2005,  
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<sup>40</sup> Mary Slosson, “Marine Pleads Guilty, Ending Final Haditha Trial” Reuters, January 2012.  
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<sup>41</sup> *Rules of Engagement*. DVD. Directed by Arun Rath. (2008; Boston, MA, WGBH Educational Foundation: PBS Video, 2008).

<sup>42</sup> Rath.

<sup>43</sup> Tim McGirk, “Collateral Damage or Civilian Massacre in Haditha?” *Time*, Mar 2006,  
<http://www.time.com/time/world/article/0,8599,1174649,00.html>

<sup>44</sup> Rath.

<sup>45</sup> McGirk.

<sup>46</sup> Slosson.

<sup>47</sup> Rath.

<sup>48</sup> Rath.

<sup>49</sup> Leila Fadel, “Haditha Victims’ Kin Outraged as Marines Go Free” *McClatchy Newspapers*, November 2005. <http://www.mcclatchydc.com/2008/06/21/41817/haditha-victims-kin-outraged-as.html>

<sup>50</sup> Rath.

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<sup>52</sup> FM 3-24.

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<sup>53</sup> Tom Bowman (Pentagon Correspondent, National Public Radio), interviewed by Maj Wade C. Reaves, USMC, January 15, 2013.

<sup>54</sup> RADM USN (Ret) Stephen R. Pietropaoli (Senior Director, CAPSTONE, Center for Naval Analysis), interview by Maj Wade C. Reaves, USMC, January 18, 2013.

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<sup>59</sup> LtCol David Odom, USMC (Commanding Officer, 3<sup>rd</sup> Battalion, 8<sup>th</sup> Marines), face-to-face interactions with Maj Wade C. Reaves, USMC, September 2008 through May 2009.

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<sup>61</sup> Bowman.

<sup>62</sup> LtCol Dent.

<sup>63</sup> Major Jeff Liebenguth, USMC (Judge Advocate General, Hadith, Iraq in 2007) interview with Maj Wade C. Reaves, USMC, December 2012.

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<sup>69</sup> Webpage for Congressman Walter Jones. Press release, March, 2005. <http://jones.house.gov/press-release/jones-introduces-legislation-support-lt-pantano> .

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<sup>71</sup> Bowman.

<sup>72</sup> Rath.

<sup>73</sup> Pietropaoli.

<sup>74</sup> Connelley, Tripodi, 212.

<sup>75</sup> LtCol Odom.

<sup>76</sup> Connelley, Tripodi, 207.

<sup>77</sup> LtCol Odom.

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